

JUDGE WOOD

D. Maimon Kirschenbaum
Denise A. Schulman
Charles E. Joseph
JOSEPH, HERZFELD, HESTER &
KIRSCHENBAUM LLP
757 Third Avenue
25th Floor
New York, NY 10017
(212) 688-5640
(212) 688-2548 (fax)

*Attorneys for Named Plaintiff, proposed FLSA
Collective Plaintiffs, and proposed Class
Members*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**MOSHE KOPLOWITZ, on behalf of himself
and all others similarly situated,**

Plaintiff,

v.

LABATON SUCHAROW LLP,

Defendants.
-----X

COMPLAINT

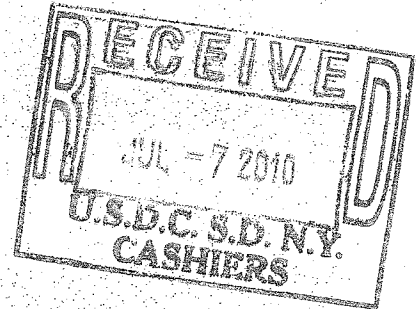
**FLSA COLLECTIVE ACTION AND
RULE 23 CLASS ACTION**

DEMAND FOR JURY TRIAL

Plaintiff Moshe Koplowitz, on behalf of himself and all others similarly situated, alleges
as follows:

JURISDICTION AND VENUE

1. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA"). This Court has supplemental jurisdiction over the New York state law claims, as they are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.



2. Venue is proper in this District because Defendant conducts business in this District, and the acts and/or omissions giving rise to the claims herein alleged took place in this District.

THE PARTIES

3. Defendant Labaton Sucharow LLP (“Defendant”) is a New York limited liability partnership whose principle place of business is 140 Broadway, New York, NY 10005.

4. Defendant is a law firm with over 60 attorneys and which, upon information and belief, engages in commerce and has an annual gross volume of business done in excess of \$500,000.

5. Plaintiff Moshe Koplowitz (“Plaintiff”) is a New York resident. He worked for Defendant as temporary or “short-term” attorney within the last three years.

FLSA COLLECTIVE ACTION ALLEGATIONS

6. Plaintiff bring the First Claim for Relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all attorneys employed by Defendant on or after the date that is three years before the filing of the Complaint in this case as defined herein who were paid an hourly wage and worked over 40 hours in a week (“FLSA Collective Plaintiffs”).

7. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendant’s decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules willfully failing and refusing to pay them one and one half times their regular rate of pay for work in excess of forty (40) hours per workweek. The claims of the Plaintiff stated herein are essentially the same as those of the other FLSA Collective Plaintiffs.

8. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Defendant.

RULE 23 CLASS ALLEGATIONS – NEW YORK

9. Plaintiff brings the Second Claim for Relief pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”), on behalf of all attorneys employed by Defendant on or after the date that is six years before the filing of the Complaint in this case as defined herein (the “Class Period”) who were paid an hourly wage and worked over 40 hours in a week.

10. All said persons, including Plaintiff, are referred to herein as the “Class.” The Class members are readily ascertainable. The number and identity of the Class members are determinable from the records of Defendant. The hours assigned and worked, the positions held, and the rates of pay for each Class member are also determinable from Defendant’s records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under said Rule 23.

11. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the court. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are based are presently within the sole control of the Defendant, upon information and belief, there are more than forty (40) members of the Class.

12. Plaintiff's claims are typical of those claims which could be alleged by any member of the Class, and the relief sought is typical of the relief which would be sought by each member of the Class in separate actions. All the Class members were subject to the same corporate practices of Defendant, as alleged herein, of failing and refusing to pay them one and one half times their regular rate of pay for work in excess of forty (40) hours per workweek. Defendant's company-wide policies and practices affected all Class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiff and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

13. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

14. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants.

15. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual Class members are small in the sense pertinent to a class action analysis, the expenses and burden of individual

litigation would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them.

16. Important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties.

17. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

18. Upon information and belief, Defendant and other employers throughout the state violate the New York Labor Law. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

19. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members, including:

- a. Whether Defendants employed Plaintiff and the Class members within the meaning of the New York Labor Law.
- b. Whether Defendants paid Plaintiff and the Class members the overtime rate required by the New York Labor Law for hours worked in excess of 40 per workweek.

FACTS

20. Defendant committed the following alleged acts knowingly, intentionally and willfully.
21. Defendant employs temporary or “short-term” attorneys.
22. Throughout his employment with Defendant as a temporary or “short-term” attorney, Defendant paid Plaintiff an hourly wage.
23. Plaintiff routinely worked more than 40 hours per week.
24. Defendant paid Plaintiff for the hours he worked in excess of 40 per week at his regular hourly wage rather than at one and one half times his regular hourly wage.
25. Defendant committed the foregoing acts against the Plaintiff, the FLSA Collective Plaintiffs, and members of the Class.

FIRST CLAIM FOR RELIEF

**(FLSA Overtime Violations, 29 U.S.C. §§ 201, *et seq.*,
Brought by Plaintiff on Behalf of
Himself and the FLSA Collective Plaintiffs)**

26. Plaintiff, on behalf of himself and other FLSA Collective Plaintiffs, realleges and incorporates by reference all previous paragraphs.

27. Throughout the statute of limitations period covered by these claims, Plaintiff and the other FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek.

28. At all relevant times, Defendant had and operated under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay Plaintiff and the FLSA Collective Plaintiffs at the required overtime rate of one and a half times their regular rate for hours worked in excess of forty (40) hours per workweek.

29. As a result of Defendant's willful violations of the FLSA, Plaintiff and the FLSA Collective Plaintiffs are entitled to recover their respective unpaid compensation, liquidated (double) damages, attorneys' fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF
(New York Overtime Violations, 12 NYCRR § 142-2.2,
Brought by Plaintiff on Behalf of Himself and the Class)

30. Plaintiff, on behalf of himself and the Class members, realleges and incorporates by reference all previous paragraphs.

31. Throughout the Class Period, Defendant willfully, intentionally, and regularly failed to pay Plaintiff and the Class members at the overtime rate of one and a half times their regular rate for hours worked in excess of forty (40) hours per workweek, as required by the NYCRR.

32. As a result of Defendant's willful violations of New York law, Plaintiffs and the Class members are entitled to recover their respective unpaid compensation, attorneys' fees and

costs, liquidated damages as provided for by the New York Labor Law, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs and members of the Class, prays for relief as follows:

- A. Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- B. Designation of Plaintiff as Representative of the FLSA Collective Plaintiffs;
- C. Designation of this action as a class action pursuant to Rule 23;
- D. Designation of Plaintiff as Representative of the Class;
- E. An award of damages, according to proof, including liquidated damages, to be paid by Defendant;
- F. Penalties available under applicable laws;
- G. Costs of action incurred herein, including expert fees;
- H. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. § 663 and other applicable statutes;
- I. Pre-judgment and post-judgment interest, as provided by law; and
- J. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: New York, New York
July 7, 2010

Respectfully submitted,

JOSEPH, HERZFELD, HESTER &
KIRSCHENBAUM LLP

By:



D. Maimon Kirschenbaum

Denise A. Schulman
Charles E. Joseph
757 Third Avenue
25th Floor
New York, NY 10017
Tel: (212) 688-5640
Fax: (212) 688-2548

*Attorneys for Plaintiff, proposed collective action
members and proposed class*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to
which he has a right to jury trial.